The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

Follow up items from the February 14, 2012 Meeting

The items set forth below address issues raised at the last meeting (Item #1) and through input to OCOB from interested parties.

1. Mr. Kukla questioned whether the language of § 53-6-14(c) might be construed to limit the ability of a party in litigation to challenge the admissibility of a document solely on the basis that it was accompanied by a bank certificate that complied with the requirements of the section.

   UPDATE:
   As that was not the intention in drafting the statute, OCOB conferred with Mr. Kukla and others and recommends rewriting the introductory language of § 53-6-14(c) to read:

   "(c) Originals and converted tangible forms of records ~~shall not be held inadmissible in any court action or proceeding on the grounds that they lack certification, identification, or authentication, and~~ shall be received as evidence if otherwise admissible in any court or quasi-judicial proceeding if they have been identified and authenticated by the live testimony of a competent witness or if the records are accompanied by a certificate substantially in the following form:"

2. It was suggested that the introductory language in § 53-6-4, as well as in the other sections dealing with deposit accounts could be improved and made consistent among the sections.

   UPDATE:
   OCOB agrees with this suggestion and recommends that the Commission rewrite the first sentence of proposed § 53-6-4(a) to read:

   "(a) A bank may ~~issue and operate~~ establish a deposit account in the name of a minor or in the name of two or more individuals, one or more of whom are minors, and receive payments, pay withdrawals, accept a pledge of the account, issue automated teller machine (ATM) and debit cards, contract for overdraft protection, and act in any other manner with respect to the account on the order of the minor with like effect as if the minor were of full age and legal capacity."

3. OCOB received a suggestion to rewrite § 53-6-5(a) for greater clarity.

   UPDATE:
   OCOB agrees with this suggestion and recommends that the Commission rewrite § 53-6-5(a) to read:

   ~~(a) A bank may accept and administer a deposit account and lease a safe deposit box:~~

~~(1) To one or more persons purporting to act as trustee or trustees for a trust; and~~

~~(2) For which further notice of the existence and terms of the trust is not given in writing to the bank.~~

"(a) A bank may establish a deposit account and lease a safe deposit box to one or more persons purporting to act as trustee or trustees without requiring proof of the existence or terms of the trust documentation."

4. A technical correction was suggested with respect to § 53-6-5(d)(1).

UPDATE:

OCOB agrees and recommends that the Commission rewrite § 53-6-5(d)(1) to read:

"(1) An order by a court of competent jurisdiction directing the disposition of funds and any contents of the safe deposit box;"

5. One comment expressed concern that § 53-6-5(e) could be misinterpreted to deny a bank discretion in determining whether or not to open a particular trust account.

UPDATE:

OCOB agrees and recommends that the Commission rewrite § 53-6-5(e) to read:

"(e) Nothing in this section shall obligate a bank to establish a deposit account for, or lease a safe deposit box to, ~~a~~ any trustee ~~who refuses to furnish~~ regardless of whether or not the trustee furnishes the bank with either a copy of a written trust agreement or a certification of trust."

6. As suggested in #2 above, one commenter encouraged rewriting the beginning of § 53-6-6 to harmonize it with the other statutory provisions on deposit accounts.

UPDATE:

OCOB agrees and recommends that the Commission rewrite the first sentence of § 53-6-6(a) to read:

"(a) ~~Any two or more individuals may establish a joint deposit account by written contract.~~ A bank may establish a joint deposit account in the name of any two or more individuals by written contract."

7. The death of a joint tenant in an account with right of survivorship passes ownership of funds in the account to any surviving owner or owners, subject to the right of a personal representative to collect funds as provided in Chapter 28A. The process to be followed by the personal representative is not clearly established, but is beyond the scope of this rewrite. OCOB has asked the State Bar Association to consider analyzing Chapter 28A in this

context and they have agreed to do so. OCOB will work with that organization to develop relevant legislative recommendations. However, some clarification in the proposed § 53-6-6(c) might also be helpful.

UPDATE:

OCOB agrees and recommends that the Commission rewrite § 53-6-6(c) to read:

"(c) Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the bank of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated. Payment by the bank to the personal representative shall be a complete discharge of the bank to the extent of the funds so paid, but shall not be determinative of the rights between the surviving joint tenants and the personal representative."

8. Subsection (i) of § 53-6-6 was a new provision intended to provide greater flexibility in dealing with changes in joint accounts. However, from comments received, it appears that the provision would create far more problems than it would solve.

   UPDATE:

   OCOB agrees and recommends that the Commission amend § 53-6-6 by deleting subsection (i).

9. As with #s 2 and 6 above, it was recommended that the introductory language of § 53-6-7 be revised for consistency.

   UPDATE:

   OCOB agrees and recommends that the Commission rewrite the first sentence of § 53-6-7 to read:

   "(a) ~~If any natural person or natural persons establishing a deposit account~~ A bank may establish a deposit account for any natural person or persons who shall execute a written agreement with the bank containing a statement that it is executed pursuant to the provisions of this section and providing for the account to be held in the name of the natural person or natural persons as owner or owners for one or more beneficiaries, the account and any balance thereof shall be held as a Payable on Death account."

10. In § 53-6-7(a)(1), OCOB received a suggestion to rewrite the subsection for greater clarity.

UPDATE:
OCOB agrees with this suggestion and recommends that the Commission rewrite § 53-6-7(a)(1) to read:

"(1) Any owner during the owner's lifetime may change any designated beneficiary by a written direction to the bank which is received by the bank during the owner's lifetime."

11. It was suggested that language in § 53-6-7(a)(4)b. regarding payment of funds to a minor beneficiary be consistent with the language in the "Minors" account provision in § 53-6-4(c) wherein payment can be made to a "parent or legal guardian".

UPDATE:
OCOB agrees with this suggestion and recommends that the Commission rewrite § 53-6-7(a)(4)b. to read:

"b. If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the bank shall transfer the funds in the account to the ~~general guardian or~~ parent or legal guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the bank shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds."

12. Subdivision § 53-6-7(a)(6) does not contain language releasing the bank from liability to the extent of payments made to a surviving beneficiary. The joint account statute has such a provision.

UPDATE:
OCOB believes it is reasonable to use language similar to that in the joint account statute about discharge of the bank from liability to the extent of payments made to beneficiaries. OCOB recommends that the Commission amend § 53-6-7 by rewriting subdivision (a) (6) to read:

"(6) If one or more owners survive the last surviving beneficiary who was a natural person, or if a beneficiary who is an entity other than a natural person should cease to exist before the death of the owner, the account shall become an individual account of the owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual account in a case of a single owner or a joint account with right of survivorship, as provided in G.S. 53-146.1, in the case of multiple owners. Payment by the bank to any surviving beneficiary shall be a complete discharge of the bank to the extent of the funds so paid."

13. As with #s 2, 6, and 9 above, it was recommended that the introductory language of § 53-6-8 be revised for consistency. Also, it was suggested that personal agency deposit accounts

be limited to natural persons as in existing law, because of confusion likely to be generated by trying to make an account designed for natural persons function for businesses.

UPDATE:
OCOB agrees that it would be preferable to retain the existing approach where personal agency accounts may only be established for natural persons, and recommends that the Commission amend § 53-6-8 to read:

"(a) ~~Any person may establish a personal agency account~~ The bank may establish a personal agency account for any natural person by written contract containing a statement that it is executed pursuant to the provisions of this section. A personal agency account may be any type of deposit account.

"(b) A natural person establishing an account under this section shall sign a statement containing language substantially similar to the following in a conspicuous manner:

BANK (or name of institution)
PERSONAL AGENCY ACCOUNT
G.S. 53C-6-8

The undersigned understands that by establishing a personal agency account under the provisions of North Carolina General Statute § 53C-6-8, the agent named in the account may:

1. Sign checks drawn on the account; and

2. Make deposits into the account.

The undersigned also understands that ~~if the undersigned is a natural person,~~ upon his or her death the money remaining in the account will be controlled by his or her will or inherited by his or her heirs.

_____

"(c) An account created under the provisions of this section grants no ownership right or interest in the agent. Upon the death of the principal there is no right of survivorship to the account and the authority set out in subsection (a) terminates.

"(d) The written contract referred to in subsection (a) shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) to act on behalf of the principal in regard to the account notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal ~~is a natural person and~~ so elects to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise the authority, without the requirement of

bond or of accounting to any court, until such time as the agent shall receive actual knowledge that the authority has been terminated. The duly qualified guardian of the estate of the incapacitated or incompetent principal or the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting pursuant to a durable power of attorney (as defined in G.S. 32A-8) which grants to the attorney-in-fact that authority in regard to the account which is granted to the agent by the written contract executed pursuant to the provisions of this section, shall have the power, upon notifying the agent and providing written notice to the bank where the personal agency account is established, to terminate the agent's authority to act on behalf of the principal with respect to the account. Upon termination of the agent's authority, the agent shall account to the guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal ~~is a natural person and~~ does not so elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent set out in subsection (a) terminates.

"(e) When an account under this section has been established, all or part of the account or any interest or dividend may be paid on a check made, signed or executed by the agent. In the absence of actual knowledge that the principal has died or that the agency created by the account has been terminated, the payment shall be a valid and sufficient discharge to the bank for payment so made.

"(f) A personal agency account shall have only one owner and one agent. The owner shall, however, retain the authority to change the named agent on the personal agency account.

"(g) Any personal agency account created under the provisions of G.S. 53-146.3 as it existed prior to the effective date of this section shall for all purposes be governed by the provisions of this section after the effective date of this section, and any reference to G.S. 53-146.3 in any statement establishing the account shall be deemed a reference to this section."

14. It was suggested that § 53-6-8(d) include language that clarifies the timing of the effectiveness for notice of termination under a personal agency account.

UPDATE:

OCOB agrees and recommends that the Commission amend § 53-6-8(d) to read:

"(d) The written contract referred to in subsection (a) shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) to act on behalf of the principal in regard to the account notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal is a natural person and so elects to extend

the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise the authority, without the requirement of bond or of accounting to any court, until such time as the agent shall receive actual knowledge that the authority has been terminated. The duly qualified guardian of the estate of the incapacitated or incompetent principal or the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting pursuant to a durable power of attorney (as defined in G.S. 32A-8) which grants to the attorney-in-fact that authority in regard to the account which is granted to the agent by the written contract executed pursuant to the provisions of this section, shall have the power, upon notifying the agent and providing written notice to the bank where the personal agency account is established, to terminate the agent's authority to act on behalf of the principal with respect to the account. The bank may rely on the authority granted to the agent under this section until it receives the notice of termination from the guardian or attorney-in-fact. Upon termination of the agent's authority, the agent shall account to the guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal is a natural person and does not so elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent set out in subsection (a) terminates.

15. As with #s 2, 6, 9, and 13 above, it was recommended that the introductory language of § 53-6-9 be revised for consistency.

    UPDATE:
    OCOB agrees and recommends that the Commission amend § 53-6-9 to read:
    "(a) ~~One or more adults may open and maintain a custodial deposit account~~ A bank may establish a custodial deposit account for one or more adults for or in the name of a minor and using the minor's taxpayer identification number."

16. One comment suggested that it was not clear under proposed § 53-6-9(a)(3) what steps a bank could take in transferring ownership of an account for a minor who has reached the aged of majority.

    UPDATE:
    OCOB agrees and recommends that the Commission amend § 53-6-9(a)(3) to read:
    "(3) ~~If the custodian has not already transferred control then after the minor beneficiary reaches the age of majority, the beneficiary may instruct the bank to transfer control to the beneficiary and remove the named custodian.~~ When the minor beneficiary reaches the age of majority, if the custodian has not already transferred control to the

beneficiary, the bank may permit, if requested by the beneficiary, transfer of ownership of the account to the beneficiary by removal of the named custodian or by closing the account and disbursing the funds to the beneficiary."

17. It was suggested that the language in § 53-6-10(c) be amended to provide some flexibility since some states do not have the same requirements for court issued documents.

UPDATE:

OCOB agrees and recommends that the Commission amend § 53-6-10(c) to read:

"(c) The presentation of a letter of qualification as personal representative, collector, public administrator, guardian, curator, conservator, or committee of the person issued or certified by the appointing court shall be conclusive proof of the jurisdiction of the court issuing the same and sufficient authority for such payment or as otherwise permitted under applicable state statute or procedure."